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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/716,581

11/19/2003

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28850-33(LSCOMSUG01)

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07/03/2008

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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

07/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/716,581 | Applicant(s) DETORA ET AL. | |
| | Examiner Carolyn A. Paden | Art Unit 1794 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-14 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-14, 16-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 27, 2008 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-14 and 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morano (5,549,757).

Morano discloses a process for recrystallizing sugar. In example 1 1000 pounds granulated white refined sugar is pulverized and sprayed with 10 gallons of molasses/refiners syrup blend that has a 79.5 Brix. This combination resulted in a sugar admixture with 2.3% moisture. Then the admixture was fed into a single screw cooker extruder and extruded onto a convey belt and subsequently passed through a knife edge comminuting

mill. A desirable twin screw extruder is also contemplated at column 8, lines 10-12. Finally the product was screened to a desired particle size to form a free flowing sugar (see example 1). Alternative liquid syrup components of the composition are described at column 4, lines 16-25 to include corn syrup. Claim 1 appears to differ from Morano in the recitation of the concentration of sugar in the liquid sugar. Both Morano and the claimed invention utilize a combination of sugars to achieve a product with low moisture content. To adjust the Brix or sugar concentration of the liquid sugar to control the moisture content of the final blend would have been within the abilities of one of ordinary skill in the art. No unobvious or unexpected difference is seen between the use of the syrup blend concentration in Morano and the syrup blend of the claims. It is appreciated that the grind size of claim 3, 5, 9, 10, 12 and 17 is not mentioned but to grind sugar to one extent over the other is seen to be within the determination of the ordinary artisan.

It is finally appreciated that “permitting back flow” is not mentioned but it is the examiner’s position that this feature would have been expected from the processing in Morano.

Applicant has amended the claims to require a twin-screw fed mixer in his process. Applicant urges that Morano teaches away from the use of a twin fed extruder at column 8, lines 4-6. The argument and amendment to the claims have been considered but are not persuasive. First apparatus limitations in process claims do not alone carry patentable weight. The cost of the twin fed extruder does not carry any patentable weight for non obviousness, particularly when the twin fed extruder is disclosed as being "desirable". Morano describes disadvantages of certain twin screw extruders at column 2, lines 15-41. But the Morano process appears to provide for the same crystallization step that occurs quiescently at column 12, lines 53-55. The fact that Morano did not choose a twin screw extruder for his process does not alone constitute unobviousness.

Applicant argues that his process would not provide a recrystallized sugar that is suitable for use in a compressed tablet. This has been considered but is not persuasive because the claims do not require this feature.

Applicant argues that Morano does not disclose the preparation of compressed tablets. This is disagreed with. Examples 11-12 show the preparation of compressed tablets from the products of example 1.

Applicant argues the moisture content of the feed sugar in Morano. Morano uses a feed sugar with 2.3% moisture (column 13, lines 13-16). No unobvious or unexpected result is seen from the difference in moisture content between Morano and the claimed invention.

The rejection of the claims over Graham has been withdrawn in response to applicants' amendment to the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794